IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1038 OF 2004

Sushilabai More of Mumbai,
Indian inhabitant, residing
at Flat No.7, 2nd Floor, Riviera,
New Riviera Co-operative Housing
Society, Marine Drive,
Mumbai - 400 021. ..**Petitioner**

Vs.

1. Union of India
Aaykar Bhavan, New Manne,
Mumbai - 400 020.

2. Rear Admiral M.P.Taneja,
being the Flag Officer C-in-C,
Western Fleet, Indian Navy,
and also the Estate Officer
under the provisions of the
Public Premises (Eviction of
Unauthorised Occupants) Act,1971
having his office at Headquarters,
Maharashtra Naval Area,
C/o.Fleet Mail Office,
Mumbai - 400 001.

3. Military Estate Officer,
Maharashtra & Gujarat Circle,
having his Office at the
Military Estate Office,
Afghan Church, Colaba,
Mumbai - 400 005. ..**Respondents**

Mr.D.D.Madan, Senior Advocate with Shyam Mehta with F.Pooniwala i/b. R.A.K. Najan - E.S.Sani for the Petitioner.

Mr.Dara Zaiwala, Senior Advocate with Y.R.Mishra, D.A.Dube i/b.T.C.Kaushik for the Respondent Union of India.

CORAM :- DR.S.RADHAKRISHNAN &
SMT.V.K.TAHILRAMANI,JJ.

DATE : 19TH DECEMBER, 2006

JUDGMENT (PER :- DR.S.RADHAKRISHNAN,J.)

1. By this Petition, the Petitioner is seeking to challenge the show cause notice dated 9th September,2003 and a notice dated 21st January,2004 under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act,1971, issued by the Respondents for evicting the Petitioner from Flat No.7, New Riviera Co-operative Housing Society, Marine Drive, Mumbai-400021, registered under the Maharashtra Co-operative Societies Act on 19th May, 1979.

2. The brief facts are that in the year 1942 the Government of India under the Defense of India Rules requisitioned 26 flats out of 28 in Riviera Building and, as Flat Nos.21 and 6 being already occupied by monthly tenants, were not requisitioned. On 4th September,1962, the Ministry of Defence derequisitioned the Flat No.7 and thereafter the said flat was occupied by the Petitioner as a direct tenant. On 16th May,1968, Flat No.3 was derequisitioned by the Ministry of Defence. It appears that since 1970, the earstwhile landlady of the building Riviera, Rani Ruplaxmi had committed defaults in payment of income tax, lease rent & municipal taxes. On 23rd October,1974, the 1st Respondent intimated the Military Estate Officer, Colaba, Bombay that the Naval Headquarters had initiated a proposal of the acquisition of the said

building. On 12th April,1976 Bombay Municipal Corporation had attached and put up the building Riviera for auction and in the said auction, the building was purchased by 18 occupants of flats in Riviera, however, the Petitioner was not one of the Purchasers, as she was a tenant. Accordingly, on 27th July,1976, Certificate of Sale was issued by the Bombay Municipal Corporation in favour of the purchasers.

3. On 9th August,1976, the 1st Respondent informed the Chief of Naval Staff, Bombay that the President of India had granted sanction for acquiring the building Riviera. Thereafter on 14th November,1977, a Notification under Section 4 of the Public Premises Act, was published in the Government Gazette. The Government of Maharashtra sent a letter dated 22nd July,1980 to the Military Estate Officer, Bombay & Gujarat Circle with request to confirm that the acquiring body would not disturb the occupants of the 4 flats. After considering the objections filed by the auction purchasers, the 1st Respondent issued a Notification dated declaring that the said acquisition of the building Riviera is for the public purpose of accommodation of Naval Officers. Even thereafter by letter dated 12th March,1981 the 1st Respondent assured Mr.Y.B.Chavan, the brother of the Petitioner that the occupants of the four flats would not be disturbed even after acquiring the building Riviera.

The said declaration was challenged by some of the auction purchasers in Writ Petition No.74 of 1981. By filing an affidavit dated 28th February,1986, Mr.T.K.Banerji, the Joint Secretary (Navy) of the Ministry of Defence inter stated that the Military Estate Officer, Bombay & Gujarat Circle, had informed the Under Secretary to the Government of Maharahstra on 6th September,1980, that the occupants of the said four flats, who were not-Government Officers, would be allowed to continue to occupy their premises even after the acquisition proceedings. By a Judgment dated On 9th August,1990 the Rule issued in Writ Petition No.74 of 1981 was discharged, consequently on 9th May,1991 a Special Leave Petition came to be filed against the said Judgment, which was dismissed.

4. The Government of India, Ministry of Urban Development had issued Guidelines in the year 1992 to ensure that the interests of genuine tenants would not be jeopardized & the Copy of the Guidelines was Notified in the Gazette. In view of the said Guidelines, the Ministry of Urban Development by a letter dated 5th August,1992 clarified that the Guidelines issued in respect of Public Sector Undertakings also apply in regard to the premises owned by Central Government Departments. It appears that on 22nd January,1993, the Special Land Acquisition Officer had passed an Award in respect of the acquisition of the said building. Therefore, the

auction purchasers had filed Writ Petition no.475 of 1993 in this Court, which was dismissed on 26th April,1993 and a Special Leave Petition also came to be dismissed, which was filed against the order dated 26th April,1993.

5. It appears that thereafter the Special Land Acquisition Officer sent a Notice dated 15th July, 1996 to the Secretary of the Co-operative Housing Society and requested that the possession of the flats be handed over on 30th July,1996. Thereafter the auction purchasers had filed a Writ Petition No.1457 of 1996 in this Court against the said Notice, which was came to be dismissed by this Court and an Appeal No.810 of 1996 against the said order was also came to be dismissed.

6. The Notification dated 30th May,2002 expressly states that the guidelines have been formulated & notified to prevent the arbitrary use of power to evict genuine tenants from public premises & to limit the use of powers by Estate Officers was notified by the Union of India. The Government of India issued a "Government Resolution", notifying the aforesaid Guidelines in the Gazette of India on 8th June,2002. Despite the said Guidelines & Notifications, the Petitioner received a notice dated 11th February,2003 to vacate purporting to treat her occupation as unauthorised. On 9th September,2003, the Petitioner's

tenancy was purportedly terminated on the ground that the said flat was required for residential purposes to accommodate personnel of the Armed Forces. The Petitioner was asked to vacate premises and hand over vacant possession. The Petitioner by reply dated 9th October,2003 pointed out that she is a genuine tenant.

7. Mr.Zaiwala, the learned Senior Counsel appearing on behalf of the Respondents raised two objections in the present Petition, and the first objection is by way of a preliminary objection contending that after termination of tenancy by a letter dated 9th September,2003, the show cause notice dated 21st January,2004 has been issued under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act and pointed out that the Petitioner has efficacious alternate remedy by way of a statutory Appeal. The learned Senior Counsel submitted that the Petitioner can raise all the issues before the learned Estate Officer and thereafter a statutory Appeal is provided before the learned Principal Judge of the Bombay City Civil Court. The learned Senior Counsel further submitted that the Petitioner thereafter can approach this Court by way of a Writ Petition. Therefore, Mr.Zaiwala, the learned Senior Counsel contended that in this case, the Petitioner ought to have availed the alternate efficacious remedy available in law and this Court ought not to have entertained the present Petition.

8. Mr.Zaiwala, the learned Senior Counsel also raised a second objection. He contended that the 2002 Guidelines are applicable only to public sector undertakings and banks and not to Government Departments. Mr.Zaiwala, the learned Senior Counsel also fairly states that the Respondents will not raise any objection before the learned Estate Officer that the learned Estate Officer should not consider the 2002 Guidelines. Mr.Zaiwala fairly states that the Petitioner can raise the objections with regard to the show cause notice, that the same are contrary to the Guidelines, before the learned Estate Officer. He also made it clear that the Respondents will not contend that merely because the Petitioner's tenancy has been terminated on 9th September,2003 and as per Section 2(G) of the Public Premises (Eviction of Unauthorised Occupants) Act, the Petitioner ought to have to be treated as "unauthorised occupants" and as such they should not be allowed to seek recourse to the 2002 Guidelines. To put it in other words, Mr.Zaiwala made it clear that the Petitioner will be entitled to raise the issue that the said termination of tenancy was clearly contrary to the 2002 Guidelines before the learned Estate Officer, who can decide the same strictly on its own merits, in accordance with law.

9. Mr.D.D.Madan, the learned Senior Counsel for

the Petitioner could not dispute that if the Petitioner would be able to agitate all the issues before the learned Estate Officer then it cannot be contended that the Petitioner had no alternate efficacious remedy. Mr.Madan, the learned Counsel further contended that the action of the Respondents was totally without jurisdiction. This submission can also be raised before the learned Estate Officer. Having regard to the facts and circumstances of case and also in view of the fact in the present case that the tenancy has been terminated and whereas in the case of **Persis Kothawalla Vs. Life Insurance Corporation of India & Another, 2004(4) Bom.C.R.610**, we had entertained the Petition and did not drive the Petitioner to adopt the alternate remedy, as the tenancy was not terminated in that case.

10. Under the aforesaid facts and circumstances of the case, we are clearly of the view that the Petitioner would be able to agitate all the issues before the learned Estate Officer especially, when the learned Senior Counsel for the Respondents has made it clear that they will not raise any objection that the learned Estate Officer is not bound by the said 2002 Guidelines. However, Mr.Zaiwala, the learned Senior Counsel made it clear that the Respondents will contend that the said guidelines that do not apply to the Defence Department, which issue, of course will be considered by the learned Estate Officer on its own

merits, while deciding the Appeal.

11. Under the aforesaid facts and circumstances of the case, we are not inclined to interfere in the above, exercising our extra ordinary jurisdiction under Article 226 of the Constitution of India. However, we allow the Respondents to communicate the Petitioner indicating the date on which the aforesaid proceedings will be continued before the learned Estate Officer and the learned Estate Officer shall give at least four weeks prior notice before commencing the said inquiry under the Public Premises (Eviction of Unauthorised Occupants) Act. It is also made clear that the learned Estate Officer, while hearing the matter shall take into account 2002 Guidelines and shall also decide whether the same applies to Government Department or not and also decide the matter strictly on its own merits. Needless to mention that thereafter a statutory Appeal is provided under the Public Premises (Eviction of Unauthorised Occupants) Act before the learned Principal Judge of the Bombay City Civil Court. The present Petition has been filed at the stage of the show cause notice. Hence, we are not inclined to interfere at this stage and the Rule is discharged with the above observations.

12. It is also made clear that all the contentions raised by the Petitioner and the submissions of the

Respondents are expressly kept open and the learned Estate Officer to decide the same strictly on its own merits in accordance with law.

(DR.S.RADHAKRISHNAN,J.)

(SMT.V.K.TAHILRAMANI,J.)